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SINGLE BENCH

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**IN THE HIGH COURT OF JUDICATURE AT BILASPUR,
CHHATTISGARH**

WRIT PETITION No. 5887 OF 2005

PETITIONER

✓ Mohammed Kalam, S/o Habib,
Sarpanch, Gram Panchayat,
Singhouri, Tehsil & District,
Mahasamund (Chhattisgarh)

Versus

RESPONDENTS

P.R. No. 6041/05
Present by ASIP AbduTaba
23/11/05
RECEIVED-COPY
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CLERK to A. G. BILASPUR

- ✓ 1. State of Chhattisgarh through the Secretary, Department of Panchayat & Social Welfare, Mantralaya, DKS Bhawan, Raipur (Chhattisgarh)
- ✓ 2. Director Panchayat And Appellate Officer, Raipur (Chhattisgarh)
- ✓ 3. Additional Collector And Prescribed Authority, Mahasamund (Chhattisgarh)
- ✓ 2. Hemlal Sahu, S/o Nepal Singh, Village Singhouri, Tehsil & District Mahasamund (Chhattisgarh)

**WRIT PETITION UNDER ARTICLE 226/227 OF THE
CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE
NATURE OF CERTIORARI, MANDAMUS, PROHIBITION AND
OTHER SUITABLE WRIT OR WRITS, DIRECTION OR
DIRECTIONS, ORDER OR ORDERS**

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AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.5887/2005

Mohammed Kalam

Vs.

State of Chhattisgarh and others

JUDGMENT

Post for 13.10.2006

**Sd/-
Sunil Kumar Sinha
Judge**

seen
filed
Sharma
Adv.

Seen
Markham

(89)
AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.5887/2005

Mohammed Kalam
Vs.
State of Chhattisgarh and others

Appearance:

Shri Sanjay K. Agrawal and Shri Saurabh Sharma,
counsel for the petitioner.

Shri Satish Gupta, Dy. Govt. Advocate for the State/
respondents no.1 to 3.

Shri Saurabh Dangi, counsel for respondent no.4.

JUDGMENT
(13.10.2006)

Sunil Kumar Sinha, J

(1) A challenge is made to the order dated 05.10.2005 passed by the Director Panchayats (C.G) Raipur, in Appeal Case No.111/A-89 of 2004-2005, by which, the said authority dismissed the appeal of the petitioner and confirmed the order passed by the competent authority under sub-section (3) of section 36 of the C.G. Panchayat Raj Adhiniyam 1993 (hereinafter referred to as the Act, 1993).

(2) The brief facts are that the petitioner and respondent no.4 both were candidates for election to the post of Sarpanch of Gram Panchayat which was held in the month of January 2005, in which the petitioner was duly elected. Thereafter, respondent no.4 made a complaint to the competent authority that the petitioner was blessed with 3rd child (daughter) on 03.4.2001 i.e., after 26.1.2001 and the nomination papers were filed suppressing the aforesaid facts. He prayed that since the petitioner suffered with disqualification for being the office bearer of the Panchayat vide Clause (m) of sub-section (1) of section 36 of the Act, 1993, he should be removed

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forthwith. On such application, the competent authority registered case No.6-A/89 of 2004-2005 and commenced the proceedings in terms of sub-section (3) of section 36 of the Act. He called upon the petitioner, to file his reply and thereafter gave opportunities to lead evidence to both the parties and after giving reasonable opportunity of being heard, passed its order dated 31.5.2005 holding that the 3rd child of the petitioner was borne on 3.4.2001, therefore, he suffered a disqualification u/s 36(1)(m) of the said Act of 1993 and he was not competent to continue as Office bearer of the Panchayat under the said provisions. Against the said order passed by the competent authority, the petitioner filed an appeal before the Director, Panchayats, who dismissed the appeal and confirmed the orders passed by the competent authority. It is against this order, the petitioner has visited this court under Article 226/227 of the Constitution of India.

(3) Learned counsel for the petitioner raised two points. His first submission was that the finding in relation to date of birth of the 3rd child of the petitioner is not in accordance with law. He stressed that the competent authority failed to consider and appreciate the relevant entries pertaining to the date of birth contained in certificate issued by the Registrar, Births and Deaths, on 20.12.2004 (Annexure P-3). His submission was that the aforesaid entry is of binding nature and the same was a conclusive proof of evidence of date of birth of the 3rd child of the petitioner. Secondly he contended that the orders passed by the competent authority as also by the appellate authority are without jurisdiction because as an effect of passing of such an order, the election of the petitioner is ultimately set aside and for that, the only remedy available was to file an election petition, therefore, bypassing such a remedy, the application of respondent

no.4 could not have been entertained by those authorities under the garb of which, the ultimate effect is that the election is set aside.

(4) I have heard learned counsel for the petitioner at length and have also perused the records of the writ petition.

(5) So far as the first argument about the entries in the birth certificate is concerned, learned counsel for the petitioner, referred to the decision rendered in the matter of Smt. Vanajakshamma and others -vs- P. Gopala Krishna, AIR 1970 Mysore 305 and the decision rendered by the Division Bench of M.P. High Court in D.K. Arya, I.P.S. -vs- Union of India, 1990 (1) MPWN Note 204.

(6) In Smt. Vanajakshamma's case (supra), the learned single Judge of the said High Court while hearing a matter u/s 488 of the Code of Criminal Procedure, filed by the mother and two children, believed the statement of the mother who stated that the 3rd petitioner (child) was borne in Bellary, in the Government Women's Hospital. She has supported her contentions by producing Ex.P.1, the extract of the Birth Register relating to the birth of the third petitioner. The High Court observed that Ex.P.1 is the certified copy of the extract from the Register of Births, registered in Bellari Municipality during the month of July, 1966. In the said extract, the name of the mother is given as Vanajakshamma (1st petitioner) and the name of the father is mentioned as Gopalakrishna (respondent) and the place of birth is mentioned as Government Women's and Children Hospital, Bellary. Observing so, the Court held that the certificate Ex.P.1 was a public document and as per section 77 of the Evidence Act, certified copy of a public document may be produced in proof of contents of the public document. It further held that from the evidence of the mother and contents of Ex.P.1, it can be

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reasonably concluded that the petitioner 3 was born to the respondent after his marriage with petitioner no.1 when they were living at Bellary and ultimately it held that the other petitioners were the children born to the respondent after his marriage with the first petitioner at Tirupathi.

(7) In the said case, the fact in issue was not the date of birth. Rather the certificate was held to be a supporting evidence of relationship between the petitioners and respondent so as to consider their claim for maintenance. The Court has never said that any disputed entry made in the certificate was the conclusive proof of such entry which binds every one and no other evidence can be looked into against its genuineness. There was no such occasion with the said court to consider the point on this line and the judgment referred to by learned counsel for the petitioner is not helpful to him and the same is distinguishable on above points.

(8) The next judgment, passed by the M.P. High Court relates to the correction of date of birth in the service records, for which, a representation was made by the employee to the employer on the basis of the birth certificate and was rejected. In the said context, the Division Bench of the M.P. High Court said that it cannot be disputed that the record produced by the petitioner has statutory force as Register of Births and Deaths is required to be maintained by the Municipal Board by law. There were other supporting evidence like old school certificate etc., in favour of the petitioner and considering all those and further considering the explanation offered by the petitioner for the mistake which had crept in the service record, the said Court issued a mandamus to correct the entry in service record of the petitioner showing his date of birth as

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14.11.1937 because of the statutory compulsion to give effect to the statutory document Annexure P3 (birth certificate therein). In that case, there was no dispute regarding date of birth of the petitioner and the same was uniformly entered in the birth certificate and the school certificate and in that situation, the Court had issued a mandamus because except the undisputed statutory documents, there were no contrary documents and in the facts and circumstances of the present case, this law is also not helping to the petitioner and the same is distinguishable.

(9) The case of the petitioner is one of disputed entry and the question to be considered is as to whether the entries of certificate issued u/s 13 of the Registration of Births and Deaths Act 1969, should be held to be conclusive proof of date of birth mentioned in the certificate ?

(10) The Registration of Births and Deaths Act 1969 (hereinafter referred to as the Act 1969) was brought by the Central Government with the objects and reasons that the Government needs adequate and accurate country-wide data for registration of births and deaths in the country for the purpose of national planning, organizing public health and medical activities and developing family planning programmes. The national interest requires an acceptable level of performance by the States and technical uniformity of the methods and standards used in the collection and compilation of data throughout the country. It is an Act to provide for the regulation of the registration of births and deaths and for matters connected therewith. Section 13 of the Act 1969 provides about the delayed registration of births and deaths. Sub-section (1) of section 13 provides that any birth of which information is given to the Registrar

after the expiry of the period specified therefor, but within thirty days of its occurrence, shall be registered on payment of such late fee as may be prescribed. Sub-section (2) provides that any birth or death of which delayed information is given to the Registrar after thirty days but within one year of its occurrence shall be registered only with the written permission of the prescribed authority and on payment of the prescribed fee and the production of an affidavit made before a notary public or any other officer authorized in this behalf by the State Government. Sub-section (3) provides that any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a Magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee. Sub-section (4) provides that the provisions of this section shall without prejudice to any action that may be taken against a person for failure on his part to register any birth or death within the time specified therefore and any such birth or death may be registered during the pendency of any such action.

(11) In the present case, as per the contents of the Certificate Annexure P-3 itself, it would appear that the birth of female child namely Ku. Muskan Khan was registered on 20.12.2004 whereas it is contained in certificate that she was born on 16.11.2000. That means this entry was certainly made beyond the period of one year of the occurrence, even if it is held to have taken place on 16.11.2000 and was made under the provisions of sub-section (3) of section 13 of the Act 1969.

(12) The scheme of the Act 1969 has been formulated to make a restraint on public at large to get the births and deaths registered so

as to have a correct data at a glance for developmental works of the Government with which intention, the Act was brought. The restraints contained in Section 8 and thereafter further contained in section 13 are with an intention to avoid manipulations in the entries of births and deaths. It is for this reason, the time constraint has been laid down by the Legislature and ultimately the provisions for delayed registration have also been made though the agency of the Court and any entry which has not been made within one year from the date of occurrence can be made only by an order of Magistrate. The directions for delayed entry by the order of Magistrate is only binding on Registrar who is to follow the order and it does not bind an aggrieved party who agitate the correctness of the entry made in the birth register on the basis of which the certificates are being issued. A party cannot argue that since the entries were made pursuant to an order of the court, therefore, the data so entered should be taken as decisive and final due to indulgence of the Court and in this manner, the entry should be held to be the conclusive proof of date of birth. The provisions of section 13(3) are not the adjudicatory forum for obtaining a decision on the point of disputed date of birth of a person and the order exercising jurisdiction under sub-section (3) can never be deemed to be a judgment or order on the point of disputed date of birth. It is more so because the party disputing the date of birth is never required to appear before the concerned Magistrate to take an objection and to get a decision after contest on the point. Therefore, the status of an entry regarding date of birth or death contained in the records kept by the Registrar under the provisions of the Act 1969 would be that of a relevant evidence regarding proof of date of birth, but it shall not be the conclusive proof of the date of birth or death of a person and it shall always be

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subject to the scrutiny by a court of law as any other evidence and its correctness can well be determined by the concerned court on the basis of facts and circumstances of each case and further on the basis of touch-stones and scale of credibility and appreciation of evidence by the said Court.

(13) In the present case, the competent authority in due appreciation of evidence has disbelieved this entry which was delayed by 4 years holding that on the basis of evidence available on record, the third child of the petitioner was born on 3.4.2001 i.e., after 26.1.2001 and in this manner, the petitioner had suffered disqualification for being an office bearer of the Panchayat.

(14) So far as Article 227 is concerned, the Apex Court while dealing with the matter relating to Rent Control Legislation held in Lakshmikant Revchand Bhojwani and another -vs- Pratapsing Mohansingh Pardeshi, (deceased through his heirs and legal representatives), (1995) 6 SCC 576 that the High Court was not justified in extending its jurisdiction under Article 227 of the Constitution of India in the said case as the said act of rent legislation was a special legislation governing the landlord and tenant relationship and disputes. The Apex Court held that the legislature has, in its wisdom, not provided second appeal or revision to the High Court. The object is to give finality to the decision of the appellate authority. The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.

(15) It was again held by the Apex Court in the matter of **Sugarbai M. Siddiq and others -vs- Ramesh S. Hankare (dead) by L.Rs., reported in (2001) 8 SCC 477** as settled principle of law that in a petition under Article 227 of the Constitution, the High Court has to see whether the lower Court or the Tribunal has jurisdiction to deal with the matter and if so, whether the impugned order is vitiated by procedural irregularity; in other words, the Court is concerned not with the decision but with the decision making process.

(16) In the facts and circumstances, in the writ jurisdiction, re-appreciation would not at all be possible and the arguments advanced by learned counsel for the petitioner that the finding in relation to date of birth of 3rd child of the petitioner is not in accordance with law, cannot be accepted by taking a different view.

(17) The second point relating to jurisdiction of the competent authority is totally misconceived. The arguments advanced by learned counsel for the petitioner that only remedy available to aggrieved persons against the election of petitioner, was to file an election petition, cannot be accepted in view of the constitutional provisions and further in view of the provisions of the Act 1993. Part IX of the Constitution deals with Panchayats. Article 243-F deals with disqualifications for membership. Sub-clause (1) of this Article provides that a person shall be disqualified for being chosen as, and for being, a member of a Panchayat – (a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned: provided that no person shall be disqualified on the ground that he is less than 25 years of age, if he has attained the age of 21 years; (b) if he is so disqualified by or under any law made by the Legislature of the

State. Sub- Clause (2) of this Article further provides that if any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in clause (1), the question shall be referred for the decision of such authority and in such manner as the Legislature of a State may , by law, provide. Further Article 243-K provides for elections to Panchayats. Sub-clause (4) of this Article provides that subject to the provisions of the Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats and thereafter, lastly in this part, vide Article 243-O bar to interference by the Courts in electoral matters is provided wherein, the provisions are that notwithstanding anything in the Constitution, (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under Article 243-K, shall not be called in question in any Court; (b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any Law made by the Legislature of a State. It is in this light the provisions of the Act of 1993 are to be read. In this Act, section 36 provides for disqualification for being office bearers of Panchayat and many disqualifications have been embodied therein. One of these disqualifications, to which we are mainly concerned, comes in clause (m) of sub-section (1) of section 36 which says that no person shall be eligible to be an office bearer of the Panchayat who has more than 2 living children one of whom is born on or after the 26th day of January 2001. Sub section (2) of section 36 provides that if any person having been elected as an office bearer of Panchayat—

(a) subsequently becomes subject to any of the disqualification mentioned in sub-section (1) and such disqualification is not removable or being removable is not removed or becomes office bearer concealing his disqualification for it, which has not been questioned and decided by any election petition u/s 122.

(b) xxx xxx xxx

(c) xxx xxx xxx

he shall, subject to the provisions of sub-section (3), cease to be such office bearer and his office shall become vacant. There is a proviso to this sub-section to which, we are not concerned, further, sub-section(3) provides that in every case the authority competent to decide whether a vacancy has occurred under sub-section(2) shall be Collector in respect of Gram Panchayat and Janpad Panchayat and Director Panchayat in respect of Zila Parishad who may give his decision either on an application made to him by any person or on his own motion. Until, the Collector or Director, Panchayat, as the case may be, decides that the vacancy has occurred, the person shall not cease to be an office bearer. A proviso to this sub-section is also added that no order shall be passed under this sub-section against any office bearer without giving him a reasonable opportunity of being heard. Thereafter, sub-section (4) provides that any person aggrieved by the decision of Collector or Director, Panchayat, as the case may be, under sub-section(3), may within a period of 30 days from the date of such decision appeal to Director, Panchayat or Board of Revenue respectively whose orders in such appeal shall be final. Section 122 provides for election petition. Sub-Section(1) provides that an election under this Act "shall be called in question" only by a petition presented in the prescribed manner to the authorities described in the section. Sub-section (2) provides that no

such petition shall be admitted unless it is presented within 30 days from the date on which the election in question was notified and further sub-section (3) provides that such petition shall be enquired into or disposed of according to such procedure, as may be prescribed. In exercise of powers conferred u/s 95(1) read with sub-section(i) and (iii) of section 122, the State Legislature has framed the Rules commonly known as Madhya Pradesh (C.G) Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules 1995. These rules deal with the manner of presentation of election petition and the procedure to be adopted for disposal of such petitions. Rule 21 specifically deals with the grounds for declaring election to be void. It has been provided by sub-rule (1)(a) that subject to provisions of sub-rule(2) if the specified officer is of the opinion that on the date of his election the returned candidate who was not qualified or was disqualified to be chosen to fill the seat under the Act, the Specified Officer shall declare the election of the returned candidate to be void.

(18) If the scheme of the Act 1993 and the rules framed thereunder are examined in view of the provisions of the Constitution, referred to above, it would appear that the State Legislature taking note of the provisions of Article 243F(1)(b) has scribed the provisions of section 36(1) and further the provisions of section 36(2) (3) and (4) have been scribed after taking further note of sub-clause(2) of Article 243-F. While making laws in relation to the elections of the Panchayat, the State Legislature was alive of the provisions of the Constitution especially the provisions contained in Article 243-K (4) and in Article 243-O and then only, two different provisions one u/s 36 (1) (2) (3) and (4) and the other u/s 122 of the Act were made independently.

The Constitution itself provided by Article 243-F(2) that for determining the disqualification of membership, which the State Legislature would prescribe, the question shall be referred for decision of the authority concerned in such manner as the Legislature of the State may provide by law. Therefore, these two provisions which are in consonance with the provisions of Article 243F and 243K, operate in two different fields of administration of Panchayats and it cannot be said that all kinds of cases, including that of disqualification, can only be decided or adjudicated by the election forum and to determine the disqualification, none except the election petition would be maintainable. If such a view is taken, that would go against the spirit of Constitution which clearly provides for making separate provision by the State Legislature to determine the disqualifications of the members and has given liberty to the State to create an authority in this regard and also to create a method in which the same shall be determined.

(19) The arguments advanced by learned counsel for the petitioner that the only remedy to determine the disqualification would be an election petition and no independent proceeding can be drawn in this regard and if it is drawn, it goes against the provisions of Article 243-O of the Constitution, cannot be accepted. In fact, the State Legislature has itself said in sub-section(2)(a) of Section 36 of the Act that if a person becomes an office bearer concealing his disqualification for it, "which has not been questioned and decided by any election petition u/s 122", then it has to be referred for decision to the authority described in this section. These are the key words and this is a subsequent indication that if the question has already been adjudicated by the election forum it will not come before the

authority for further decision and if the same has not been questioned and decided by the Election Forum then only it can be referred for decision under this section. Another important aspect is that there may be a case that a person is elected concealing his disqualification but his election is not called in question in an election petition u/s 122, and his continuance may be on the ground of his popularity or on the ground that every body wants him to continue as the office bearer, then if the arguments of learned counsel for the petitioner is accepted, no body would be able to remove him and a disqualified person, who was legally or constitutionally not authorized even to be elected, shall continue on the post and nobody will be able to remove him. Certainly, this is not the spirit either of Constitution or of the Act. Therefore for deciding the question of disqualifications a forum u/s 36 (2) and (3) and a forum u/s 122 by filing an election petition both are available but the provisions of section 36 (2) & (3) are available only with the rider that it shall be availed if the factum of disqualification has not been questioned and decided by any election petition u/s 122 of the Act, and I hold it accordingly.

(20) In view of the above, it is held that the concerned Collector was having full authority and jurisdiction to entertain such a petition and the arguments advanced by learned counsel for the petitioner fails.

(21) In the result, this writ petition is dismissed. There shall be no orders as to costs.

Sd/-
Sunil Kumar Sinha
Judge